

CHAPTER 2: FACTFINDING

Learning Objectives

At the end of this chapter you will be able to:

Primary Learning Objective (PLO)

Describe the factfinding process.

Classroom Learning Objective 2/1

Identify types of information needed from contractors to complete analysis of the proposal. Seek any facts necessary to complete the analysis.

Classroom Learning Objective 2/2

Identify different methods of factfinding and selection criteria.

Classroom Learning Objective 2/3

Describe the process and guidelines for selecting and preparing government employees to participate in factfinding sessions with contractors.

Classroom Learning Objective 2/4

Describe the factfinding process.

Classroom Learning Objective 2/5

Describe the potential results of factfinding.

Contents and Procedures

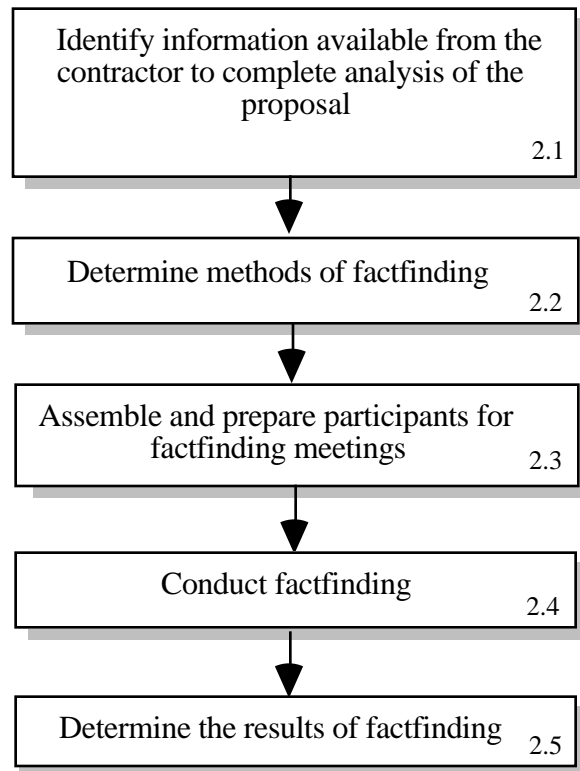
Chapter Contents

In this chapter you will learn:

Section	Title	See Page
2.0	Chapter Overview	17
	Necessary Information	17
	Define Factfinding	17
	When Factfinding is Necessary	17
	Purpose of Factfinding Sessions	17
	Types of Information Clarified	18
	Distinguish Factfinding from Negotiation	18
	When Factfinding Occurs	18
2.1	Identify Information Available from the Contractor Necessary to Complete Analysis of the Proposal	19
	Focus of Factfinding	19
2.2	Determine Methods of Factfinding	20
	Factfinding in Typical Contracting Situations	20
2.3	Assemble and Prepare Participants for Factfinding Meetings	21
	Prepare Team	21
	Technical Preparation	21
	Questions on Business Terms and Conditions	22
2.4	Conduct Factfinding	23
	Factfinding Agenda	23
	Dos and Don'ts of Factfinding	23
	Length of Factfinding Session	24
	Factfinding Session	24
2.5	Followup on Results of Factfinding	25
	Revise Preliminary Negotiation Objectives	25
	Amend or Cancel the RFP, if Necessary	25
	Document	25
2.6	Chapter Summary	26

Procedural Steps

The following flow chart outlines the steps of factfinding:



2.0 Chapter Overview

Necessary Information

The presentation in this chapter begins after completion of your initial analysis of the proposal. At this point, you should have in hand:

- The solicitation
- The proposal and all data submitted by the contractor to support the proposal
- Data from your research of the deliverable, the market for the deliverable, any relevant acquisition histories
- Any field pricing reports or audits
- Your analysis of the proposed price and, where appropriate, of the different cost elements
- Technical reviews

Define Factfinding

Factfinding is communication with the contractor (orally or in writing) to identify and obtain all information available from the contractor necessary to complete the analysis of the proposal. In addition, factfinding sessions provide the contractor with an opportunity to seek clarification of the government's stated requirements (including the statement of work and any other term or condition of the solicitation).

When Factfinding Is Necessary

The government may need to factfind when information submitted by the contractor appears to be incomplete, inconsistent, ambiguous, or otherwise questionable.

Purpose of Factfinding Sessions

FAR 15.807(a)

The FAR represents "factfinding sessions with the offeror" as part of the process of establishing the government's negotiation objectives. To establish meaningful objectives prior to negotiation, both sides need a clear understanding of all the work to be performed under the contract and the terms and conditions that each has put on the table (the government in its solicitation, the contractor in its proposal). Hence, both parties should view factfinding as an opportunity to exchange information and clear up misunderstandings or erroneous assumptions that could impede the upcoming negotiation.

Types of Information Clarified

Factfinding centers on clarifying matters:

- Affecting cost

For example:

- Data requirements
- Delivery schedule

- Design problems
- Production problems
- Identifying assumptions

For example:

- The use of initial production lots in calculating learning curve slopes.
- Identification of which escalation index(es) will be applied and the time period for the index(es).

**Distinguish
Factfinding
from
Negotiation**

During factfinding, there is often a strong temptation to immediately counter the contractor's position. However, factfinding is not the same as the bargaining session and to do so would destroy the purpose of the session. It is extremely important that both parties avoid any attempt to negotiate during a factfinding session. Factfinding is somewhat analogous to the discovery process in our legal system.

Bargaining during the factfinding session causes the government side to lose in two ways. The negotiations may inadvertently harm the government position because the issues are negotiated before analysis is completed. Once negotiation begins, it becomes less likely that the remaining factfinding issues will be clarified.

**When
Factfinding
Occurs**

Factfinding before the negotiation conference permits the government negotiator to evaluate the facts, establish a negotiation objective, and get necessary clearances. For smaller, less complicated procurements with considerable historical data, the interval between stages is often short; sometimes the bargaining even occurs on the same day, immediately after the factfinding session. Larger, more complicated procurements generally require a lengthy break between factfinding and negotiation session to give both sides sufficient time to digest the acquired information. Another reason for a delay is to give both sides enough time to submit an updated solicitation or proposal.

Factfinding does not always end when negotiations begin. Questions and clarifications are generally a continuing process throughout the negotiation, particularly clarifications in the statement of work, product description, and contract specifications. Factfinding continues to serve the important purpose of assuring mutual understanding before an issue is negotiated.

2.1 Identify Information Available from the Contractor Necessary to Complete Analysis of the Proposal

Focus of Factfinding

Factfinding closely follows the first analysis of an offer, which raises questions and discloses apparent inconsistencies and areas that need to be explored in more detail.

The government side looks for two kinds of facts when cost analysis is required:

- First, establish the actual costs of doing the same kinds of tasks. This determination is then used as a bench mark against which to measure the probable future costs of the upcoming contract.
 - Second, isolate the assumptions and judgments made by the contractor in getting from the indicated current costs to probable future costs.
-

2.2 Determine Methods of Factfinding

Factfinding in Typical Contracting Situations

The following table outlines appropriate methods of factfinding in typical contracting situations:

Method of Factfinding	Typical Contracting Situation
Telephone conversation to clarify limited points about the contractor's proposal.	Relatively simple requirement and low dollar value.
Face-to-face meetings consisting of either a single representative from each side or many team members from both sides, including technical specialists.	Moderate to relatively complex requirements and moderate to high dollar value.
Written request for proposal clarification, or identification of a proposal deficiency.	Relatively complex requirement where documentation is required.

With contracts of moderate to high degrees of complexity, formal face-to-face factfinding sessions and site visits with the contractor are often desirable. Since these sessions are not part of the formal negotiation phase, the contract specialist's objective is to obtain a thorough understanding of the proposal.

On less complicated proposals, factfinding may consist only of a government letter addressed to the contractor asking questions to clarify points made in the proposal. Phone calls may also be appropriate to clarify simple questions.

2.3 Assemble and Prepare Participants for Factfinding Meetings

Prepare Team The individuals on the factfinding team are not necessarily the same people who serve on the negotiation team. Only those individuals who are designated either to ask and respond to questions, or to listen for information to help in preparing for negotiations need to attend the factfinding meeting. Conversely, some who attend the factfinding session might not be needed for the negotiation sessions.

Preparing the factfinding team includes the following responsibilities:

- Selecting factfinding team members.
 - Assigning roles to members who can contribute to discussions, and assigning to other government participants the responsibility of listening to, documenting, and analyzing contractor responses.
 - Briefing team members prior to the meeting with contractor representatives on their roles during the factfinding session.
 - Developing questions to ask the contractor to provide or clarify information.
-

Technical Preparation

Technical preparation includes the following:

- Marking working copies of proposals for easy reference to questioned areas or facts.
- Sending factfinding questions to the designated contractor team leader prior to factfinding.
- Reviewing and rehearsing the planned questions so the team members can concentrate on hearing and verifying answers. It is important to prepare factfinding questions in a non-threatening form, such as:
 - How was this estimate developed?
 - What is to be provided by the proposed tasks listed on (specific) page numbers?
 - When will proposed efforts be finished?
 - Who will accomplish the proposed efforts?
 - Why are the levels of proposed efforts needed?
 - How do the proposed efforts relate to the contract specifications?

Review the proposed questions and responses beforehand to ensure that they do not unwittingly give away potential government positions or other confidential information.

Questions on Business Terms

Since factfinding is also conducted to clarify apparent inconsistencies in the contractor proposal, questions can be used to:

and Conditions

- Correct clerical mistakes in the proposal.
 - Obtain missing information needed to estimate price-related factors.
 - Collect additional facts to clarify the proposed price or any other conditions attached to the proposed price by the contractor.
 - Request additional information that may be needed to develop the price negotiation objectives. In some cases, areas of “gold-plating” can be identified for possible elimination and corresponding savings in contract price.
-

2.4 Conduct Factfinding

Factfinding Agenda

The three stages of effective factfinding sessions are:

- Introduction
- Detailed Interview
- Ending

Introduction: Introduce participants. Try to establish rapport with friendly conversation such as, "How was your trip?". Summarize the purpose and meeting agenda.

Detailed Interview: Maintain a professional decorum by relaxed listening and minimal interruptions. Ask questions and verify answers to finalize the government prenegotiation objectives on the proposed terms and conditions of the contract. Provide truthful and unambiguous responses to the contractor side.

Ending: Summarize the important things that were said by each side during the session. Clarify outstanding issues. Express appreciation to the other side. Terminate or reschedule factfinding session. Determine tentative time for bargaining session.

Dos and Don'ts of Factfinding

DO:

- Use questions as a way to begin discussions.
- Start with simple questions.
- Break complex questions into simple issues.
- Identify and rank discussion subjects and levels of concern.
- Be thorough and systematic rather than unstructured.
- Ask for the person who made the estimate to explain the amounts.
- Question the contractor until each answer is clearly understood.
- Include questions on the rationale for estimated amounts.
- Assign action items and clarification requests for incomplete answers.
- Caucus with team members to review answers and formulate the next round of questions.

DON'T:

- Negotiate price during factfinding.
 - Interpret how to do a proposed effort for the contractor.
 - Answer questions that other team members ask the contractor to answer.
 - Allow the contractor to avoid direct answers.
 - Discuss available funding or price objectives.
-

Length of Factfinding Session

The length of the factfinding session depends entirely on the amount and type of information needed. The factfinding session might require more time than the negotiation; this is often the case when contract specifications are not very clear, or when the proposal contains items that are not properly supported. Factfinding should continue until both sides agree on the facts. Neither side's position can

be realistic until there is mutual understanding concerning the facts.

**Factfinding
Session**

The basic communication skills during the factfinding process are:

- Questioning
- Probing
- Listening
- Understanding.

Questioning: Although planning detailed questions on specific areas is desirable, non-directed and wide-ranging questions can also be advantageous. These questions are deliberately wide in scope to stimulate broad responses. This technique often produces more information in the form of unsolicited answers than a detailed questioning method. The questioning method to be chosen largely depends on the subject matter and the personality of the person to whom the questions are directed.

Probing: The probing technique is useful when the contractor's answers are either vague or qualified. Probing involves a series of questions concerning the same subject matter with each successive question getting more specific to elicit a full and adequate answer. Probing also involves using different approaches or ways of asking the same question. When the answer is not satisfactory, you may ask it in another way, postpone asking the question for a while, and then rephrase the question until adequate answers are forthcoming. However, you should ensure that the questioning does not lead to an argument, which would defeat the purpose of the factfinding session.

Listening: Listening is as vital to communication as talking. Inadequate communication is too often caused by inadequate listening. Moreover, the art of listening is of special significance during factfinding because the purpose of the sessions is to absorb answers by listening.

Understanding: Differences in language or interpretation can often lead to misunderstandings and even unintentional disputes. To avoid this, a good technique is rephrasing a point and asking whether your interpretation is correct. Another useful technique is to share relevant portions of the technical evaluation with the contractor to show similarities and differences in the scope or statement of work.

2.5 Followup on Results of Factfinding

Revise Preliminary Negotiation Objectives

At the conclusion of the factfinding, the government factfinders will have accomplished their purpose if they have:

- Obtained a mutual understanding with the contractor on the pertinent facts pertaining to the offer,
 - Tested the validity of the issues and positions identified in negotiation planning,
 - Determined the assumptions and factual basis for the contractor's position, and
 - Identified the contractor position on issues and the relative importance or priority the contractor places on the issues.
-

Amend or Cancel the RFP, if Necessary

Occasionally, factfinding reveals serious flaws in the RFP. In such a situation, consider amending the solicitation or cancelling and resoliciting the RFP.

Document

Document the results of factfinding by keeping a written record of the questions that were asked and the answers that were received during the factfinding. Generally, someone on the factfinding team should be designated as a recorder to keep a written record of what transpired during the factfinding session.

2.6 Chapter Summary

Summary

Factfinding is an important part of government contract negotiations that is needed to clarify incomplete, inconsistent, or otherwise questionable information in the contractor proposal. Although factfinding often occurs in a separate session prior to the start of actual negotiations, factfinding is a continuous process that may even be conducted at the start of the bargaining session. The government should not negotiate during factfinding since the purpose of the session is to obtain valid information on the proposal.
